

### **REMARKS**

#### **I. Overview**

Claims 1-26 and 31 will be pending in the present application upon entry of this amendment. Claims 1, 10-17, and 25 have been amended. Claims 27-30 have been canceled without prejudice. Claim 31 is newly presented. The outstanding issues raised in the Final Office Action of July 03, 2007 (*Office Action*) are as follows:

- Claim 9 stands rejected to under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;
- Claims 1-5, 7-13, 15-21, and 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0107830 (*Nanja*) in view of U.S. Patent Application Publication No. 2003/0005455 (*Bowers*);
- Claims 6, 14, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers* and U.S. Patent Application Publication No. 2004/0199635 (*Ta*); and
- Claims 1, 9, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of U.S. Patent Application Publication No. 2002/0146008 (*Kaplan*).

In response, Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the amendments and remarks presented herein.

#### **II. Claim Amendments**

Claims 1 and 17 have been amended to recite that at least two of the aggregated or assembled preferences correspond to different data of a same data or information source provider. No new matter has been presented with this amendment as the added language finds

ample support throughout the Specification as originally filed. *E.g., Specification* at ¶¶ [0034]—[0037]; Figure 6.

Claims 10-16 have been amended to recite a system rather than a method to correct an informality discovered during preparation of this paper. No new matter is presented. Moreover, these amendments are not intended narrow the scope of these claims.

Claim 25 has been amended to recite aggregating preferences of a plurality of subscribers for different information available from one of data provider to form a superset of said information. No new matter has been presented with this amendment as the added language finds ample support throughout the Specification as originally filed. *E.g., Specification* at ¶¶ [0034]—[0037]; Figure 6.

### III. Claim Rejections Under 35 U.S.C. § 112, first paragraph

Claim 9 stands rejected under 35 U.S.C. § 103(a) as failing to comply with the written description requirement because, according to the Examiner, the specification fails to disclose “means for assembling two or more of said information preferences gathered from said plurality of subscribers that correspond to different data of a same data source provider into an aggregate preference.” *Office Action* at p. 2. Applicant respectfully disagrees.

For example, figure 6 of the present specification shows aggregating two or more information preferences (600 and 602) gathered from a plurality of subscribers that correspond to different data of a same source provider (402-N) into an aggregate preference (606). *Specification* at ¶ [0036]; Figure 6. In this illustrative and non-limiting example, the different data may be, for instance, PAC10-Football/Soccer/ Volleyball scores and Texas Longhorns-MEN/Football/Basketball scores. *Id.* The aggregate information containing this different data is then retrieved via a data stream (609). Accordingly, there is clear support for claim 9 in the specification as originally filed, and Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 112 rejection of record with respect to that claim.

#### IV. Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja* and *Bowers*

Claims 1-5, 7-13, 15-21, and 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers*. *Office Action*, at p. 2. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

It is well settled that “[t]he examiner bears the initial burden of factually supporting any *prima facie* case of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” MPEP § 2142. To make a *prima facie* case of obviousness, the Examiner must determine the “scope and content of the prior art,” ascertain the “differences between the prior art and the claims at issue,” determine “the level of ordinary skill in the pertinent art,” and evaluate evidence of secondary considerations. *Graham v. John Deere*, 383 U.S. 1, 17, (1966); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (2007); *see also* M.P.E.P. § 2141. When determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. M.P.E.P. § 2141.02(I).

The Supreme Court in *KSR* stated that it is “important [for an examiner] to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S. April 30, 2007). Indeed, the Court indicated that there should be an “explicit” analysis regarding “whether there was an *apparent reason* to combine the known elements *in the fashion claimed* by the patent at issue.” *Id.* (emphasis added). Further, the Court did not totally reject the use of “teaching, suggestion, or motivation” test as a factor in the obviousness analysis. *Id.* at 14-15.

##### A. Insufficient Reason to Combine

The rejection of claims 1-5, 7-13, 15-21, and 23-26 should be withdrawn because the combination of *Nanja* with *Bowers* is improper. In support for the combination, the Examiner states that:

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the [aggregation] of *Bowers* into the teachings of *Nanja* for the purposes of increasing the network resources efficiency (paragraph 9-11).

*Office Action*, at p. 4. However, Applicant maintains that the “aggregation” provided in *Nanja* is very different from the “aggregation” provided in *Bowers*. Particularly, *Nanja* aggregates different data retrieved from different sources as requested by a single user. *E.g.*, *Nanja*, at Abstract. Meanwhile, *Bowers* aggregates requests (*not* retrieved data itself) originated by different users (*not* a single user) for the same data (*not* different data) provided by a single source (*not* different sources). *Bowers*, at Abstract.

Contrary to the Examiner’s assertion, Applicant’s position is not that *Bowers* and *Nanja* are non-analogous art. *See Office Action* at p. 14. Rather, Applicant has repeatedly pointed out that *Nanja* and *Bowers* are so different from each other, there is no indication that the use of both aggregation methods together would “increase network resources efficiency,” as contended by the Examiner. In fact, the use of both aggregation methods seems to involve the duplication of at least some aggregation efforts, and thus would be detrimental to the efficiency of *Nanja*’s network. Moreover, it is not immediately appreciable how the “aggregation” of *Bowers* would work together with the “aggregation” of *Nanja*, if at all. Thus, Applicant further submits that a combination of *Bowers* with *Nanja* would require a substantial reconstruction and redesign of the elements shown in *Nanja*, as well as a change in the basic principle under which *Nanja* was designed to operate. *See In re Ratti*, 270 F.2d 810, 843, 123 USPQ 349, 352 (CCPA 1959).

Accordingly, the combination of *Nanja* with *Bowers* is improper, and Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 1-5, 7-13, 15-21, and 23-26.

## **B. Lack of All Claimed Elements**

### **1. Independent Claim 1**

Independent claim 1, as amended, recites:

aggregating said information preferences received from said plurality of subscribers into aggregated information preferences, wherein at least two of said aggregated information preferences correspond to different data of said same data source provider . . .

The Examiner has previously admitted that *Nanja* does not teach or suggest a similar feature, and relied solely upon *Bowers* as teaching or suggesting that feature. *Office Action*, at p. 4. However, claim 1 now recites that two or more of the aggregated information preferences correspond to different data of a same data source provider. In contrast, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . .”) (emphasis added). Applicant respectfully submits that neither *Nanja* nor *Bowers* teaches or suggests this claimed element.

In addition, Applicant maintains that *Bowers* only discloses aggregating requests for specific media streams. *E.g.*, *Bowers* at ¶ [0050]. Clearly, *Bowers*’ requests for streaming media files do not specify “types” of media files selected by a subscriber insofar as they must identify the desired media files themselves. *Id.* at ¶ [0015] and [0033].

Therefore, the combination of *Nanja* and *Bowers*, even if proper, does not teach or suggest every element recited in claim 1. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 1.

## 2. Independent Claim 9

Independent claim 9 recites “means for assembling two or more of said information preferences gathered from said plurality of subscribers that correspond to different data of a same data source provider into an aggregate preference. . . .” Similarly as noted above with respect to claim 1, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . .”) (emphasis added).

Applicant respectfully submits that neither *Nanja* nor *Bowers* teaches or suggests this claimed element.

Therefore, the combination of *Nanja* and *Bowers*, even if proper, does not teach or suggest every element recited in claim 9. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 9.

3. Independent Claim 17

Independent claim 17, as amended, recites:

code for assembling said one or more preferences received from said plurality of subscribers into an aggregate preference, wherein at least two of said assembled one or more preferences correspond to different data of a same information source provider . . . .

Again, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . . .”) (emphasis added). Therefore, Applicant respectfully asserts that the combination of *Nanja* and *Bowers*, even if proper, does not teach or suggest at least this element recited in claim 17. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 17.

4. Independent Claim 25

Independent claim 25, as amended, recites:

aggregating, by said enhanced broadcast server, said preferences of said plurality of subscribers for different information available from one of said at least one data provider to form a superset of said information that is of interest to said plurality of subscribers. . . .

The Examiner has previously admitted that *Nanja* does not teach or suggest a similar feature, and relied solely upon *Bowers* as teaching or suggesting that feature. *Office Action*, at pp. 9 and 10.

However, Applicant submits that *Bowers* does not teach or suggest aggregating preferences of a plurality of subscribers for different information available from one of at least one data provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . .”) (emphasis added). Therefore, Applicant respectfully asserts that the combination of *Nanja* and *Bowers*, even if proper, does not teach or suggest at least this element recited in claim 25. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 25.

5. Dependent Claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, and 26

As noted above, the combination of *Nanja* and *Bowers*, even if proper, does not teach or suggest every element recited in claims 1, 9, 17, and 25. Dependent claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, and 26 depend from claims 1, 9, 17, and 25, each dependent claim thus inheriting all the elements of its respective independent claim. Consequently, the combination of *Nanja* with *Bowers*, even if proper, also fails to teach every element of dependent claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, and 26. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, and 26.

V. **Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja*, *Bowers*, and *Ta***

Claims 6, 14, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers* and *Ta*. *Office Action*, at p. 5. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

A. **Lack of All Claimed Elements**

As noted above, the combination of *Nanja* with *Bowers* fails to teach or suggest every element recited in claims 1, 9, and 17. The Examiner does not rely upon *Ta* as teaching or suggesting these elements, and Applicant asserts that *Ta* does not teach or suggest such features. Therefore, the combination of the combination of *Nanja* with *Bowers* and *Ta*, even if proper, fails to teach or suggest all of the elements of independent claims 1, 9, and 17. Dependent

claims 6, 14, and 22 depend from claim 1, 9, and 17, respectively, each dependent claim thus inheriting all the features of its respective independent claim. Consequently, the combination of the combination of *Nanja* with *Bowers* and *Ta*, even if proper, also fails to teach or suggest all of the elements of dependent claims 6, 14, and 22. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 6, 14, and 22.

#### **VI. Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja* and *Kaplan***

Claims 1, 9, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Kaplan*. *Office Action*, at p. 5. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

##### **A. Lack of All Claimed Elements**

Independent claim 1 recites “aggregating said information preferences received from said plurality of subscribers into aggregated information preferences, wherein at least two of said aggregated information preferences correspond to different data of said same data source provider.” The Examiner has admitted that *Nanja* does not teach or suggest these features, and relied solely upon *Kaplan* as teaching or suggesting that feature. *Office Action*, at p. 7. However, *Kaplan* only discloses aggregating requests “by cell,” without regard to whether the data being requested correspond to the same data source provider. *E.g.*, *Kaplan* at ¶¶ [0063] (“a client-server cellule . . . advertises the aggregated subscriptions of all its clients to its neighbor cellule . . .”). Applicant respectfully submits that neither *Nanja* nor *Kaplan* teach or suggest this claimed element.

Therefore, the combination of *Nanja* and *Kaplan* does not teach or suggest every element recited in claim 1. Claims 9 and 17 recite similar elements and thus are patentable for at least the same reasons. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 1, 9, and 17.



## VII. New Claims

Claims 31 has been added by the present amendment. No new matter has been presented with this amendment as the added language finds ample support throughout the Specification as originally filed. *E.g.*, *Specification* at ¶¶ [0016] and [0034]—[0037]; Figure 6. In addition, Applicant believes that claim 31 is patentable over the references of record, taken alone in combination.

For example, new claim 31 recites:

receiving preferences from a plurality of subscribers,  
wherein two or more of said preferences specify different subsets  
of information that are available from one of a plurality of data  
providers;  
aggregating said two or more of said preferences;  
sending a request comprising said aggregated preferences  
to said one of said plurality of data providers;  
receiving said different subsets of information; and  
sending each of said different subsets of information to a  
corresponding one of said plurality of subscribers.

Applicant asserts that neither *Nanja*, *Bowers*, *Ta*, nor *Kaplan* teach or suggest these features. Therefore, the references of record, taken alone or in combination, do not teach or suggest every element recited in claim 31. Accordingly, Applicant respectfully requests that the Examiner pass claim 31 to issue.

### VIII. Conclusion

In view of the above, Applicant believes the pending application is in condition for allowance.

Applicant believes a fee of \$810.00 is due with this response. However, if any additional fee is due, please charge our Deposit Account No. 06-2380, under Order No. M066 from which the undersigned is authorized to draw.

Dated: October 3, 2007

Respectfully submitted,

By

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: October 3, 2007

Signature:

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